

We write to you today in response to the proposed rule changes by the Department of Administrative Services/Equal Employment Opportunity Division (DAS/EOD) management that will affect the Minority Business Enterprise/Encouraging Diversity Growth and Equity (MBE/EDGE) program, and the Construction Compliance program.

As leaders of the Greater Cincinnati/Northern Kentucky African American Chamber of Commerce, Minority Business Partnership (Dayton Area Chamber of Commerce), Minority Business Development Agency-Cleveland (MBDA), and the Minority Business Accelerator (Cincinnati USA Regional Chamber), we are collectively providing our comments on behalf of the minority owned and operated businesses we advocate for each day.

Each of our respective organizations we're present during your recent stakeholders meeting and after further review we're providing the comments attached, but are very concerned about the level and priority of communication from DAS/EOD to our constituents. It is our hope the comments provided will be reviewed and impact any future decisions about the proposed rule changes and improve the communication of such changes to minority business development services provided by the State of Ohio.

As a result, these are proposed rule changes needing further review, clarity, and rules to remain unchanged:

1. 123:2-16-02 "Certification criteria"
2. 123:2-16-03 "Certification of business structure"
3. 123:2-16-04 "Expedited certification"
4. 123:2-16-09 "Demonstration of good faith effort to include EDGE business participation."
5. 123:2-16-15 "Commercially useful function."
6. 123:2-16-05 "Recertification."
7. 123:2-16-06 "Decertification and Revocation."
8. 123:2-16-09 "Demonstration of good faith effort to include EDGE business participation."
9. 123:2-16-01 "Definitions"
10. 123:2-16-02 "Certification criteria"

We are concerned that these changes may have a negative impact on our constituents and have responded accordingly. Please contact anyone of us for further discussion about the proposed rules changes and our thoughts on how the DAS/EOD can improve its communication with the minority business community.

PROPOSED RULE CHANGES NEEDING FURTHER REVIEW:

We support the State of Ohio in its intention to provide opportunities for all businesses to compete for state contracts. We are also in support of efforts by the State to exercise rigor and discipline in its certification process to ensure that businesses which are eligible for certification receive certification. Simultaneously, we must be mindful that rule changes should not create unnecessary burdens and regulations on businesses seeking certification and recertification. There have been significant changes to the definitions, criteria and certification process surrounding the EDGE certification. We encourage DAS to review the following proposed rule changes:

123:2-16-02 "Certification criteria"

(B)(4) Ownership: This is a significant addition to the current rules that describes the "Ownership" definition including the determination of legitimacy. **Comment:** While we agree with the spirit of the new rule to ensure the program's participants' validity as certifiable EDGE businesses, we seek to understand how this will be determined and the potential effect on current certified firms.

123:2-16-03 "Certification of business structure"

(A)(1)-(5) Identifies the criteria that may be required for a business seeking EDGE Certification with new emphasis added to ensure owner has an interest in the capital, assets, and P&L of the business and is proportionate to ownership percentage. **Comment:** While we agree with the spirit of the new rule to ensure the program's participants' validity as certifiable EDGE businesses, we seek to understand how this will be determined and the potential effect on current certified firms.

(B)(1)-(14) Identifies criteria that will be considered to determine control, independence and ownership. The six high level requirements currently in place has expanded to 14 very detailed items. **Comment:** While we agree with the spirit of the new rule to ensure the program's participants' validity as certifiable EDGE businesses, we seek to understand how this will be determined and the potential effect on current certified firms.

123:2-16-04 "Expedited certification"

(A)(2) New requirement: In addition to being US Citizen and resident of Ohio; the "Business must be certified with other public contract assistance programs for at least one year prior to application for certification." **Comment:** This one year period does not currently exist; we seek to understand the rationale for adding it to the expedited certification process.

(F) "Upon the expiration of the initial expedited certification, a business certified pursuant to this section shall complete a unified certification application pursuant to rule 123:2-16-03 of the Administrative Code and submit all required supporting documentation." **Comment:** We seek to understand any changes this presents between the current process and the proposed process.

123:2-16-09 "Demonstration of good faith effort to include EDGE business participation."

(A) Specific services are being noted - please provide the rationale. **Comment:** Also, how is "good faith effort" determined in utilizing EDGE business participation?

123:2-16-15 "Commercially useful function."

(E)(1)-(9) This section is a new section that further defines 'commercially useful function'. Under the current certification program, certified companies can add different codes to their existing certification to perform work in fields both related and unrelated to the original certifying code.

Comment: While we encourage the practice of businesses growing into different industries, we seek to understand the potential effect of the proposed rule changes on current certified firms.

WE PROPOSE ADDITIONAL CLARITY IN THE FOLLOWING RULES:

123:2-16-05 "Recertification."

(A) This section proposes an end to EDGE certification lasting for two years. But the revision does not set a new timeframe. **Comment:** We suggest that the revised rule should clearly state the length of time for which certification is valid.

(B) This section would revise a requirement for DAS to notify a business that its certification is expiring. **Comment:** The time frame for notification should also be kept with no less than 30 days notification.

(E) This section sets new notification requirements. The text does not set prescribed forms or state whether notification can be filed in any written format. **Comment:** The section should address this at least in a broad sense, even if details come later.

(G) **Comment:** We suggest including a deadline for DAS' review and decision regarding recertification.

(I) This section adds language allowing for a request of personal information. The new allowance requiring "any pertinent personal and business records" seems overly expansive and could become intrusive. **Comment:** We suggest greater definition, and at least some limits, regarding this request for information, to the information listed throughout the rules for application for certification.

(K) This section states that no certification shall be for more than 2 years. The implication is that a certificate could be for one day to two years. **Question:** We seek greater clarity on this temporal issue.

123:2-16-06 "Decertification and Revocation."

(A) (4) **Comment:** In the 2nd line "residence" likely needs to be changed to "residents."

(A) (5) **Comment:** This section seems superfluous – given the preceding sections.

(B) **Comment:** Unless the criminal charges relate to matters affecting certification, certification should not be impacted by pending legal matters.

123:2-16-09 "Demonstration of good faith effort to include EDGE business participation."

(D) (3) This section references "sufficient" notification time. **Comment:** This term needs at least some additional reference and definition.

WE PROPOSE THE FOLLOWING RULES REMAIN UNCHANGED:

123:2-16-01 "Definitions"

(E)(2) Personal Net Worth inclusions additions: This increases the number of years that are considered for asset transfers. **Comment:** We believe this is an unnecessary change and does not add to the quality of the application process.

123:2-16-02 "Certification criteria"

(D)(1) This rule change specifies the documentation for net worth to be prior three years of gross receipts. **Comment:** We recommend prior two years of gross receipts to remain consistent with 123:2-16-02 (E) (1) which uses two years of personal income (no proposed change) and our recommendation for 123:2-16-02 (E)(3) to retain the original time period of two years.

(D)(2) Required Application Documentation: "Changed from "If married, financial records of the owner's spouse" to "Current personal financial statement indicating net worth of the owner, members, board of directors, and executive officers. **Comment:** We believe that requiring this information will have a significant negative impact on the number of firms applying for certification and does not substantially add to the quality of the application.

(E)(3) Assets transferred within the last 3 year period will be included in personal net worth calculation. Current this transfer period stands at 2 years. **Comment:** This change in requirement will force owners making asset transfers to wait an additional year to be eligible, an unnecessary change that does not add to the quality of the application process. (see 123:2-16-01 (E)(2) comments)

Continue the use of "shall" instead of the proposed "may" to maintain objectivity throughout the rules. There are a number of proposed rule changes that reflect the desire of the DAS to have flexibility but we believe can undermine the perception of objectivity and standardization.

ADDITIONAL COMMENTS:

- There has been striking out of language regarding notification of right to conduct on-site inspections. We recommend a minimum of 72 hour notification for visits. (see 123:2-16-03 (G), 123:2-16-04 (D), 123:2-16-05 (I))
- We are encouraged by comments made by DAS that they are reviewing the current goals for goods and services, professional services and others to ensure that appropriate goals are set that are achievable but can also provide a target for real movement in increasing the utilization of minority and women owned firms. We encourage DAS to review the current targets, propose new targets where necessary and make the changes and methodology for devising the targets transparent to and communicate to the business community.
- There are several different definitions and criteria used for inclusion programs administered federally or by states across the nation. We recommend that DAS harmonize its EDGE rules with those of other entities and maximize the use of 'best practices'. (see 123:2-16-01 (D), (D)(1), 123:2-16-04 (A)(1))
- There is a strong preference for DAS to align with other organizations and agencies in the use of NAICS codes in lieu of its current use of the United Nations Standard Products and Services Code and the Construction Specification Institute Codes.

Pursuant to your email dated December 24, 2013, I have reviewed the agency's proposed changes for the Ohio EDGE program and per your tight timeline during the holiday break, please find my comments below regarding dealing with the "rules", as presented and general policy.

Major Policy Issue:

The federal government and most state agencies have the following three policies enacted to support small business: Disadvantage Business Enterprise (DBE), Minority Business Enterprise (MBE), and Woman-Owned Business Enterprise (WBE/WOBE).

The national/federal MBE and WBE/WOBE programs have *always been independent of revenue criterion as described by the NAIC codes and SBA business size standards*. Whereas, DBE applicants are required to meet the NAIC specified size standards, in addition to all other uniform requirements as presented in your proposed "rule change".

The Ohio Legislators created the EDGE program for inclusion of Women businesses into DAS sponsored projects, as national and Ohio statistics have shown that women- own businesses have a disadvantaged competing in their respective fields. The national and Federal WBE/WOBE programs are in place today across the country as the statistics continue to show that "women owned Businesses "are not receiving the fair share of contracts.

The current Ohio EDGE program has been a great help to my firm as well as other WBE/MBE organizations in the state.

It is interesting that , your proposed " rule change", which combines all three programs into one new policy and mirrors the DBE program, is a *drastic deviation and a major policy change of what the legislators had intended when created the EDGE Program*. The proposed policy is completely eliminating, the Ohio "Women Business " program as presently being administered by the federal government and other states.

Proposed Rule Change:

123: 2-16-01 (D) (1) (a)

First, a business must be a small business as defined by SBA standards. SBA business size standards (found in 23 C.F.R. Part 121) vary according to the type of work the firm seeks to perform. For example, specialty trade contractors have a size standard of \$14 million while engineering and professional services firms generally have a size standard of \$4.5 million. The size

standard for heavy construction is as high as \$33.5 million while number of employees, rather than gross receipts, determines the size standard for manufacturers

The SBA size standards NAIC CODES presented in this section were updated two to three years ago and the new size standards are quite different. The new size standards were published in the Federal Register. Please note the new size standard for Engineering and Professional Services is \$ 14 million; Commercial and Industrial Construction - \$27 million, IT and Computer Services - \$ 25.5 million and Heavy Construction and Military construction - \$33.5 million.

123:2-16-02 (D) (2)

If married, financial records of the owner's spouse. And current personal financial statement indicating net worth of the owner, members, board of directors and executive officers. This requirement is **too broad and inconsistent** with Federal Uniform Certification Requirement as the current policy only requires spouse's net worth. Also, I have not encountered such requirement in other states – *approximately 7 states which we are currently registered with as a DBE and FBE*. I am concerned that this requirement may discourage qualified vice presidents, CFO, and non-owner executives from joining an organization's Board of Directors or other top management positions. If an officer is a non owner or minority owner, their individual net worth should not be relevant to the company's certification'

On behalf of OAMAE (Ohio Association of Minority Architects and Engineers) we would like to thank you for the opportunity to respond to your proposed changes to the MBE/EDGE Programs. After a careful review we feel there is significant room for structural improvements in both programs, especially as they relate to the engaging of architectural and engineering professional services. These improvements need to go far beyond the pending definition and clarification reviews that are now underway. Our fundamental issue is, and continues to be, that the minority A/E firms are not getting their fair share of State contracting and that the State's goals are not being met or properly monitored. Below we have listed our recommendations on the proposed program changes and our recommendations on structural improvements to the program.

A. EDGE Program Proposed Changes

1. DAS is over reacting to isolated cases of misrepresentation and fraud and through redefinition of eligibility and more stringent qualification criteria, they are making it very difficult for new firms to get certified and for existing firms to get re-certified. The unintended consequence of this will be fewer firms in the program. Fewer firms will want to spend the time and or expense to get certified and fewer existing certified firms will want to become re-certified (especially if they are not getting any business anyway)
2. The results of State spending for both the MBE and EDGE programs should be made public via monthly or quarterly reporting. These reports should show the details of spending in each of the major categories (goods, services, construction, professional services, etc) and be broken down by State Departments.
3. The goal levels for EDGE participation are generally set too low to encourage meaningful involvement. This is especially the case for design professionals on Architect/Engineer contracts.
4. Enforce the existing rules for EDGE and MBE participation in all State Departments.

5. It was stated at the conference that there are some 88,000 (small DBE, MBE,EDGE), firms in the State. We would pose the question, “how many are in your data base, and how much work are they doing”?

6. It is important to note that 123:2-16-09 (Good Faith) becomes meaning less unless DAS has the authority for enforcement. This needs to be carefully monitored or waivers will become the rule rather than the exception. Also, recommend that the last sentence of Section (A) be deleted

7. Chapter 123:2-16-15 (Commercially Useful Function) It is important that as a part of the enforcement process it be made clear that the EDGE participant be required to perform meaningful core work so that it can grow.

8. DAS should set up an office to monitor and resolve grievances.

9. We recommend that additional members (who are business owners themselves) be added to the Governors Committee on Minority Business.

10. Special efforts should be made to retain as many as possible of the existing certified EDGE firms by streamlining the review and certifying process. The renewal period should be at least 3 years

B. EDGE Program Structural Improvements

1. Increase the A/E EDGE participation goals (Suggestion 20%).

2. Allow the State departments and agencies to take a more primary and responsible role in selecting EDGE firms for inclusion in projects. For example, on many design-build projects the respective State department or agency will select the Architect to be hired by the Construction Manager at Risk.

3. The Ohio Facilities Construction Commission (OFCC) should require Architects on design-build projects to meet EDGE participation goals. The current design-build EDGE structure allows for EDGE goals being met by construction entities only. The effect of this structure excludes A/E professional services EDGE firms.
4. Increase the amount of value points in selection criteria relative to EDGE participation goals. As stated, most selection criteria forms indicate 0-5 points and the EDGE goal is located at the bottom/last of selection criteria forms. This minimizes the overall importance of meeting EDGE goals by Prime Contractors.
5. Require meaningful design/contract work as part of meeting EDGE goals. Place a points value for meaningful work in the selection criteria.
6. Modify program to create more responsibility and accountability by State departments and agencies for achieving EDGE goals.
7. Monitor and enforce contract activity to ensure the work indicated in the proposal is actually being performed by the EDGE firms.
8. Help connect the trade imbalance of A/E Services by awarding special credits to Ohio based/local A/E Firms in the Selection process.
9. EDGE consultant must be identified at time of submitting RFQs and/or RFPs.
10. There should be graduation from EDGE program.
11. Minority Set aside board should not be abolished. Even though the construction portion has been struck down, Goods and Services are still legal.
12. The 5% should not be aggregated but distributed by disciplines; e.g. architecture, engineering (HVAC, Electrical mechanical etc).

13. EDGE architectural and engineering teams should be identified in Design-Build and/or CMR.

14. Investigate EDGE firms for fraudulent transfer of ownership especially those owned by Caucasian females.

15. Waiver should be an exception not the rule

123:2-16-02 Certification criteria.

(D) To demonstrate that a business applying for EDGE certification meets the criteria set forth in paragraph (B)(45) of this rule, the owner of the business must upon request by the Equal Opportunity Division provide the equal opportunity division of the department of administrative services the following information, in the detail and manner determined prescribed by the division;:

(1) Financial records indicating the net worth representing previous three years of gross receipts of the business and personal net worth of the owner.

Back ground input; When the base requirement is one year in business if is not always possible to provide three years of Financials

Recommendation; The Gross receipts requested be no less than one year and up to Three years upon request, based on years of operation.

(49 CFR part 26)

(3) (2) Businesses certified under other public contract assistance programs that the director of administrative services State EEO Coordinator determines are certified in programs that require social and economic disadvantage thresholds equivalent to the EDGE program established pursuant to section 123.152 of the Ohio Revised Code .; business must be owned by United States citizens and residents of Ohio; must own the business and business must be certified with other pubic contract assistance programs for at least one year prior to application for certification.

Background input

The proposed change in the "business must be certified with other pubic contract assistance programs for at least one year prior to application for certification." Is injurious to the new MBE, based on most jurisdictions require you have "Home State" certification before MBE is eligible for other certifications.

Within the State of Ohio, whereas most cities and jurisdictions do not have local programs, those companies depend on the State of Ohio as that primary certification. The State is the first certifier, in most cases.

Recommendation is that the previous language be reinstated, and this clause "business must be certified with other public contract assistance programs for at least one year prior to application for certification", be removed.

123:2-16-04 Expedited certification.

(D) The equal opportunity division of the department of administrative services shall have a right to conduct on-site inspections and investigations at any location of a business seeking certification pursuant to rule 123:2-16-03 of the Administrative Code. The division shall give appropriate notice.

Background input:

The proposed deleted; "The division shall give appropriate notice." There is no company and or agency operating properly that doesn't have a calendar. Since there is a requirement for the eligible party to be present, it is not only appropriate for notice; it is proper business etiquette to provide scheduling time via notification. Companies seeking designation of any type should not expect to be treated less than any other business nor should the State make that suggestion directly or indirectly.

Recommendation; reinstate the clause "The division shall give appropriate notice"

123:2-16-14 Joint venture.

(G) The equal opportunity division of the department of administrative services shall have the right to conduct on site inspections at any location of the businesses seeking joint venture certification. The division shall give appropriate notice.

Background Input

Same issue relative to notification as previously stated.

Recommendation; reinstate the clause" the Division shall give appropriate notice"

123:2-16-15 Commercially useful function.

E) A company does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of EDGE participation. If an EDGE business enterprise does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the EDGE business enterprise subcontracts a greater portion of the work of a contract than would be expected on

the basis of normal industry practice for the type of work involved, then the EDGE business enterprise is not performing a commercially useful function. The Equal Opportunity Division may consider the following (but not limited to) when determining if an EDGE business is performing a commercially useful function:

- (1) EDGE business only purchases materials while performing little or no work;
- (2) the agreement between the prime contractor and EDGE business artificially inflates the EDGE participation or erodes the ownership, control or independence of the firm;
- (3) the volume of work is beyond the capacity of the EDGE firm;
- (4) the EDGE business owner is not aware of the status of the work or the performance of the business;

Background input

My response is the following three areas of this section 123:2-16-15 E, E1 and E4.

(E) "If an EDGE business enterprise does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force," is a clause which is arbitrary and holds out a standard of "one size fit's all", which is egregious and inconsistent with all trades and types of contracts in the common public or private market place. If it were true that all non- minority contracts were performed by GC's or CM's for the state of Ohio mandated such an arbitrary figure of 30% self-performance, or it was found to be standard industry practice by all contractors doing business with the State of Ohio, or private sector, then this figure would not be discriminatory or arbitrary. That is not the case in the industry and this clause in this section should be deleted.

An example: In the Waste Water Treatment plant business, it is very common to have large equipment that we install with thousands of man hours which include concrete, millwrights and laborers, but the 40 million dollar price tag of the "Egg digester" , and I have seen much larger figures on this type of equipment, makes the self-performing labor miniscule. If the state want to adjudicate each project, based on the merits of the project with this wide range of scenarios, a review board should be put in place for fairness in areas, Contractors make their living. Otherwise the State may want to reconsider making arbitrary mandate clause's, assuming one size fit's all, and a wild assumption the industry functions in this manner. Ultimately adversely affecting opportunity for the contractors you are trying to assist.

Recommendation;

delete "If an EDGE business enterprise does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the EDGE business enterprise subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved,"

Background input

(E1) In response and respectful objections of line 4 of the same section 4) the EDGE business owner is not aware of the status of the work or the performance of the business," It is sometimes humorous of the assumption that a small business owner should be so small that if ask, at any given moment, about a project, that he or she should know the status. Not saying that we can't get briefed, but that requirement of any CEO in business assumes that, he or she must be the primary person on each project and can't possibly be a business owner with management in place. Whether the State employee perceives this as a good business practice or bad, it is not material to a company's eligibility to participate as an Edge Contractor. I have at least three layers between me and a project. Most CEO's have a lot more than that. Not all companies have two or less employees and this cannot be measured with any consistency. Not outside industry standard!

The performance of the overall business is different and a separate question should be addressed.

The Recommendation; is to replace and add language along the following: "The Edge Certified Business should have a good understanding of their business and should be able to answers questions about the business and industry they are in, and have a keen understanding of their business financially and operationally"

Background and input;

(E4)

(F) An EDGE business must have a necessary and useful role in the transaction, of a kind for which there is a market outside the context of the program. The firm's role must not be a superfluous step added in an attempt to obtain credit towards the goal.

In this it refers to "of a kind for which there is a market outside the context of the program",

It is very unfair to all and typically difficult to convince someone who doesn't know what you (the contractor or supplier) do, to apply commercially useful conclusions to everything, everyone does. Having faced this question on more than one occasion, it would be helpful to assist all in determining commercially useful while addressing the statement above. While this may not cure all of the questions, it will resolve 90% of the disputes and has been a "best practice" with other programs.

Recommended statement to add; "If the company can demonstrate that it provides the function with multiple customers outside of this specific contract, the State may assume that the function being proposed is commercially useful, and is not an exceptional activity for this company to perform on the project in question."

COMMENTS SUMMARY

The SBA (Chapter 13 parts 121 -126) and DOT (49 CFR part 26), their MOU and 123.2-16 Encouraging Diversity, Growth, and Equity program provide much of the guidance for these comments. The intent is to encourage the Department of Administrative Services to harmonize its EDGE rules with those of other entities and maximize the use of existing 'best practices. Logic suggests that since SBA, DOT and DAS rules and regulations are designed to support laws and policies for businesses that are owned and controlled by socially and economically disadvantaged persons; and satisfy certain size standards, they should mirror each other. Unfortunately this is not true. A holistic examination of existing and proposed EDGE rules needs to be conducted along with their corresponding subject matters in SBA and DOT requirements.

In considering these matters lets first look at a set of serious conflicts as they appear in SBA, DOT and DAS rules and regulations..

1. DEFINITIONS:

DAS Definitions

(Existing) 123.2-16.01 (D) "Economically Disadvantaged Business" means a business at least fifty-one per cent owned and controlled by an economically disadvantaged person or persons and the business net worth does not exceed the average net worth of comparable businesses.

(Proposed) (D) "Economically Disadvantaged Business" means a for-profit business (including its affiliates) at least fifty-one per cent owned and controlled by an economically disadvantaged person or persons and the size of the business does not exceed the definition of a "small business" as defined by the United States small business administration.

(E) "Economically Disadvantaged Person" means a person whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar businesses that are not socially disadvantaged. Economic disadvantage shall be based on: ...

(P) (2) Social disadvantage may also be based on the following.

A primary business location in a qualified census tract or HUB Zone as designated by the United States Small Business Administration in 13 C.F.R. part 126 and has its principal office is located in the qualified census tract or HUB Zone.

SBA Definitions

Sec. 124.103 *Who Is Socially Disadvantaged?*

(a) General. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control.

Sec. 124.104 *Who Is Economically Disadvantaged?*

(a) General. Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are

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not socially disadvantaged.

Comment 1

Prior to any other considerations ie economically disadvantaged, size, etc, the business owners must first be determined to be socially disadvantaged. For all intents and purposes a disadvantaged business is a firm that is owned and controlled by socially and economically disadvantaged individuals that satisfies the size criteria listed in 13 CFR part 121 Small Business Size Regulations. Strict adherence to that standard reinforces both the letter and intent of ORC 123. 152

2. CERTIFICATION

123:2-16-02 Certification criteria.

(A) Unless certified pursuant to rule 123:2-16-04 of the Administrative Code, any business seeking certification in the EDGE business development program, established under section 123.152 of the Revised Code, shall first apply to the equal opportunity division of the department of administrative services for certification as an EDGE business enterprise. The application shall be made on forms provided by the division and made in a manner prescribed by the division.

(B) The equal employment opportunity coordinator of the department of administrative services shall certify a business as an EDGE business enterprise, provided the owner or owners of the business demonstrate all of the following:

(1) The business is a for-profit business entity and in business for at least one year prior immediately preceding the date of the business's to application for certification.

(2) The business is owned and controlled by a citizen or citizens of the United States.

(3) The business is owned and controlled by a resident or residents of the state.

(Existing) (4) The business is both economically and socially disadvantaged or the business owner is both economically and socially disadvantaged. (Existing)

(Proposed) (4) Ownership: The contributions of capital or expertise used to acquire ownership must be real and substantial, going beyond pro forma ownership, and derived from individually and independently owned resources. Owners must demonstrate that they possess the experience, expertise, and knowledge to operate their particular types of business. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the business is insufficient to demonstrate control. (Proposed)

Comment 2

This language disregards the positions offered in Comments 1. While the existing language at A, (4) is not appropriate, it should be amended not just moved and include appropriate socially and economically disadvantaged criteria. Such modifications will also require the balance of this section to be changed. These comments also are applicable to 123:2-16-03 Certification of business structure, 123:2-16-04 Expedited certification,

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123:2-16-05 Recertification and 123:2-16-06 Decertification and Revocation, particularly where language is alternately stated "socially and economically disadvantaged" or "economically and socially disadvantaged". The SBA Size Determinations at 13 CFR Part 121 should continue to be applicable. The Table of Contents outlines these requirements

Subpart A—Size Eligibility Provisions and Standards

PROVISIONS OF GENERAL APPLICABILITY

- §121.101 What are SBA size standards?
- §121.102 How does SBA establish size standards?
- §121.103 How does SBA determine affiliation?
- §121.104 How does SBA calculate annual receipts?
- §121.105 How does SBA define "business concern or concern"?
- §121.106 How does SBA calculate number of employees?
- §121.107 How does SBA determine a concern's "primary industry"?

In considering these factors the industry classification is relevant. DAS uses The United Nations Standard Products and Services Code (UNSPSC) and the Construction Specification Institute Codes, while SBA and ODOT use North American Industrial Classification System (NAICS). Confusion around this matter is further demonstrated at 123:2-16-03 proposal that "Removes requirement to track construction contracts by NIC code".

The (Existing) OAC 123:2-16.01 (E)(2) also references NAICS. This along with other references to Chapter 13 and 49 CFR Part 26 reiterates the intent to reconcile these rules with the Federal Regulations, even though they fall short.

3. GOOD FAITH

49 CFR Part 26 APPENDIX A (V) In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

COMMENT 3

The addition of the DOT language as an item 123:2-16-09 Demonstration of good faith effort to include EDGE business participation. D (8) as listed above permits an industry-influenced review of "good faith" prior to consideration for any waiver. Too often the review of what a bidder was able to do, with no consideration for what similarly situated bidders have been able to do results with the granting of waivers. After all, if any bidder satisfies the requirement, why should bidders who don't be

rewarded?

4. COMMERCIALLY USEFUL FUNCTION

49 CFR § 26.55 How is DBE participation counted toward goals?

- (a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.
- (1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
- (2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- (3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
- (b) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
- (c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.
- (1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
- (2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.
- (3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.
- (4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work

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involved and normal industry practices.

(5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

(d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

(1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

(2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

(5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate Department Operating Administration.

Example to this paragraph(d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

(6) For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1)--

(i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(2)(i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which

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the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

(3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

(f) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in §26.87(i).

(g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

(h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003]

COMMENT 4

This concept is offered as an amendment to 123.2-16-15 Commercially useful function or may be its owned section. It's clear that far too many pass-throughs have been tolerated, thus undermining EDGE's intent. Most often firms are used to purchase materials and supplies that have no relationship to their primary classification. These actions occur most often to the detriment of a legitimate EDGE firms that given sufficient opportunity, would satisfy the commercially useful function requirement. Insuring that firms only receive benefits that are consistent with the Primary Classification(s) for which they are approved is a prime motivation for the inclusion of the part. This hopscoatching around serves no beneficial purpose.

Implementation of the above recommendations will lay the foundation for a complete and comprehensive foundation to satisfy the legislative intent for the Encouraging Diversity, Growth, and Equity (EDGE) program by insuring that

- The intended individuals are properly identified. (Socially and Economically Disadvantaged Persons)
- The eligibility for firms to participate is clear and succinct. (Firms matching the ownership by persons described above or eligible citizen and resident owner(s) whose firms satisfy location and size requirements.
- The responsibility for utilization of such firms is strengthened. (Bidders are responsible for performances that accepts outcomes tied to industry standards and recognizes not just their own efforts, but the performance of others in the industry as well), and
- Credit for EDGE participation will be appropriately administered. (The negative impacts of "pass-throughs" will be minimized)

Further, the numerous proposed modifications involving the terms "shall", and "must" to "may" tend to undermine accountability and provide discretions where there should be none. For example at the proposed 123:2-16-02 (B) "The equal employment opportunity coordinator of the department of administrative services shall/may certify a business as an EDGE business enterprise, provided the owner or owners of the business demonstrate all of the following". If the applicant has demonstrated compliance with all of the listed criteria, why is there a discretion regarding its certification? The key is to insure that the criteria are valid and mandates a decision.

The comments offered are not necessarily consistent with one section but may have applicability to multiple rules. There should be no piecemeal modifications to the rules until the entirety of these comments are addressed. Full and immediate acceptance of the recommendations is necessary as we move forward toward the adoption of amended EDGE rules.

We, the Cleveland Branch of the National Association for the Advancement of Colored People ("NAACP"), the National Action Network ("NAN") and the Southern Christian Leadership Conference ("SCLC") stand with our constituents in seeking equity and opportunity with respect to the State of Ohio's expenditures with businesses. To further this goal, we provide the following summary of recommendations and observations made by members of the minority business community, EDGE/MBE program participants and other stake holders regarding the proposed rule changes by the Department of Administrative Services ("DAS") with respect to the State of Ohio MBE/ EDGE programs and the programs themselves.

The recommendations and observations are as follows:

1. DAS appears to be over reacting to isolated cases of misrepresentation and fraud. Is there data supporting the notion that front companies are the main reason legitimate MBE/EDGE companies are not receiving contracts? The operative question is, are the companies that are certified receiving meaningful contracts? Thru redefinition of eligibility and more stringent qualification criteria, DAS is making it very difficult for new firms to obtain certification and for existing firms to obtain re-certification. The unintended consequence may be fewer legitimate firms in the program. Fewer legitimate firms may not spend the time and or expense to obtain certification and fewer existing certified firms may not seek recertification (especially if they are not benefiting from the program as it is).

2. The results of the State of Ohio's expenditures with the MBE and EDGE programs should be made public via monthly or quarterly reporting. This could be in the form of a template score card similar to the State's Annual MBE/EDGE Score Card. The reporting should be mandatory for all state agencies and universities. These reports should show the details of spending in each of the major categories (goods, services, construction professional services etc.) and the demographic data should be disaggregated. The public and MBE's should be able to track the State's spending with the specific groups defined under the programs periodically. This is not only good public policy but should enable the State of Ohio generally, and the specific agencies and departments as well as MBE's to make targeted adjustments or take other corrective actions throughout the year.

3. The goal levels for EDGE participation are generally set too low to encourage meaningful involvement. This is especially the case for design professional, specifically, those seeking architectural and engineering contracts. Qualified Ohio African American money managers who participated previously have also fared poorly in recent years.

4. Enforce the existing rules for EDGE and MBE participation in all departments, agencies and universities. There are currently no penalties or rewards for agencies or employees who meet the MBE/EDGE spend goals. Tying compensation to achieving certain goals has proven to be an effective management tool.

5. It was stated at the Cleveland DAS presentation that there are approximately 88,000 small DBE, MBE, and EDGE firms in the State of Ohio. We pose the question, "What percent of those in your data base have received contracts thru the EDGE or MBE programs?"

6. It is important to note that 123:2-16-09 (Good Faith) becomes meaningless unless DAS has the authority to enforce the goals at least with respect to the state agencies. Further, the waiver provisions need to be carefully monitored or waivers will become the rule rather than the exception. The Good Faith language needs to be strengthened even more. DAS should provide the majority companies with more guidance and parameters with respect to demonstrating good faith efforts.

7. Chapter 123:2-16-15 (Commercially Useful Function) It is important to enforce the requirement that EDGE companies perform meaningful core work so that they can grow, particularly those participating in joint ventures.

8. With respect to the grievance procedure, perhaps DAS should become the investigating body rather than relying on the department to which the complaint is address to investigate the complaint. DAS as a more neutral party could play a more active role in monitoring or resolving grievances.

9. Additional members (who are EDGE/MBE business owners) should be added to the Governor's Minority Business Advisory Committee.

10. Special efforts should be made to retain as many as possible of the existing certified EDGE firms by streamlining the review and certifying process. The renewal period should be at least 3 years. To require an annual renewal will thwart participation and is unduly burdensome.

11. The recent privatization of food services in the prison system has reduced business to minority businesses. In addition, the large companies that obtain this business have not demonstrated commitment to MBE/EDGE businesses. A monitoring system must be established in order to ensure that our tax dollars are not going to the majority companies without any accountability to meeting the MBE goods and services set aside goals.

12. The state universities' spending on both goods and services and architectural and engineering (per the Ohio Black A&E Group) represents nearly 60% of all of their spending. There is ample opportunity for minority professionals and vendors to provide goods and services to these institutions. There should be specific initiatives to encourage their participation.

13. Consideration should be given to assigning an employee(s) to review the waiver system and implement improvements.

123:2-16-03

B) 10

Rules stating that the owner can not maintain outside employment and must work for the firm on a full time basis.

As we know the EDGE program is intended to aid small business in growth, in the early stages of a company it can be difficult or nearly impossible to have a small business maintain your livelihood. I think it is important to note that those entering into the EDGE program demonstrate their ability to manage the business despite outside employment. It might not be feasible for an individual to quit ones job when they are beginning on the journey of opening a new business but that it is still possible for an owner to control and manage the company day to day. It also might be imperative for an owner to maintain its current job to obtain certain benefits that a new EDGE certified business may not be able to offer. I think the wording is too strong as there are numerous examples of when this could be difficult to adhere to. As long as the highest position and is held by a minority that works at the firm full time the owner should not have to work solely at the EDGE certified business.

New proposed wording:

In order to be viewed as controlling a business, a socially and economically disadvantage owner(s) cannot engage in employment or business interests that conflicts with the management of the business or prevent the individual from devoting sufficient time and attention to the affairs of the business to control its activities. Owner (s) that continue to engage in outside employment can demonstrate through various emails, phone calls, supporting documentation and general knowledge of the companies daily tasks, that they are controlling and managing the business and fully aware of day-to-day operations. However if a socially and economically disadvantage individual is holding the highest ranking position at the company and working full time for the company but not yet an owner then the company is eligible.

Why can't the purchasing folks include their successful effort or performance on the utilization of MBE/EDGE on their annual job performance?

Unfortunately this email was buried in many other emails and I have only been able to skim through it quickly. While I do appreciate the EOD sending this to stakeholders, the timing was really off a little bit, I see the email was sent late Christmas Eve. Although I had access to all my emails, our office was closed. Since we had three big projects looming during this time, most of my time was concentrated on one start-up and two projects that had a December 30th deadline for completion.

At a quick glance it appears that the agency is becoming more stringent so that "front" companies are hopefully not able to get through the process. In addition, it appears that the requirements are stronger for companies showing efforts in obtaining EDGE certified contractors. I feel this is a positive move, but without true enforcement and follow-up. Sometimes we get caught in the bureaucracy of paperwork that the true follow-up is not adequate. I'm not sure how you handle this, but maybe having compliance contract officers do actual follow-up would be great. I have found on many occasions, companies claiming to contact us for a bid, but in fact haven't. A lot of times they send a fax that may come over one hour before a bid is due.

There is a lot of work to be done to assure that true capable companies are awarded the work. We pride ourselves on being a self-performing construction company and construction management firm. It irks me terribly when a brokerage company comes in and gets a contract for percentages that are unbelievable low and taint the reputation of the industry.

I wish I would have had more time to make comments, but again with the short notice this is my "short" comments.

How will DAS/EOD determine a vendor is no longer socially disadvantaged?

"Socially Disadvantaged Person" means a person subjected to ethnic prejudices or cultural bias because of their identification with a particular group without regard to their individual qualities.

Also, in the same section, correct (A) (4) to read: "*The economically and socially disadvantaged fifty-one percent owners ... are no longer United States citizens or full-time resiDENTS of Ohio.*" (Not 'residence of Ohio')

MBE

End of year/holiday time is a terrible time of year to request input from MBEs as it is less likely to be seen.

I do not agree with any of the proposed actions in 123:2-15-02 thru 06 as they do not appear to be in the best interest of MBEs.

EDGE

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(E) ... no certification shall not exceed two years (double negatives make statement challenging to read)

Page 14

Should not Equal Opportunity Coordinator and Division of Administrative Services be capitalized since they are titles?

Page 18

Should not Equal Opportunity Division be capitalized since it is a title?

THE NEW DOCS AT CERT. TIME (123:2.16 4) WHAT DO THEY MEAN?

ALSO, IS IT ALSO SAYING THAT CATCHING A CASE OR COMMITTING A FELONY DURING THE COURSE OF HAVING THE MBE WILL DISQUALIFY YOUR COMPANY. WHAT DOES THAT MEAN YOU ANTICIPATE SOMEONE GETTING INDICTED?

I would like a clarification regarding: architecture, and engineering; professional services; goods and services;

Does a service included in the EDGE program ie: those listed above, preclude the services from being included in the MBE 15% requirement?

(A) Each state agency awarding a contract for construction, architecture, and engineering; professional services; goods and services; and information technology services subject to the provisions of section 123.152 of the Revised Code shall specify in each contract the EDGE goal for subcontracts awarded to and materials and services purchased from EDGE certified business enterprises in order to meet the agency's overall EDGE goal. An agency may specify a contract EDGE goal higher or lower than the state agency's overall EDGE goal provided there is a reasonable basis for that decision.

(B) Any contractor awarded a contract for construction, architecture, and engineering; professional services; goods and services; and information technology services under Chapters 123., 125., and 153. of the Revised Code shall make a good faith effort to comply with the EDGE business enterprise goal established for the contract pursuant to division (B)(2) of section 123.152 of the Revised Code, and of this chapter.

Second...Thank you for the opportunity to review these changes. I have one question, however. Will this, or anything in the future benefit the EDGE program and, perhaps make the opportunities currently available to MBE, also available to EDGE – making these opps available for both?

I have been EDGE certified and I have not received any benefits to this. I feel a small company like mine, is caught in an abyss. We are too small to earn large projects, although have the talent and expertise to do so. Our talent is very senior, so are not able to work through CAI as their rates are too low. Have an STS, but is not used for supplemental staff. Have an EDGE certification, but no opportunities are available for EDGE....only MBE.

Many RFPs/RFIs, etc., are going out for MBE only...however, few, if any in IT, will be offered for EDGE only or even MBE and EDGE.

Agencies will often say bids are offered for MBE and EDGE, but later recant and say MBE only.

Is there anything being done to bring more value to being EDGE certified? Perhaps including EDGE with MBE opps?

We are EDGE certified. But in IT, this has offered little to no benefit, which is a shame as it took a long time and a lot of work to get certified.

It would be great if IT bids are offered to both MBE and EDGE. Most will come out saying they are for both – which makes one believe the agencies think they are one in the same, but when I bid on the opportunity, they say – oppps – they meant MBE only, resulting in several hours of unnecessary time spent on responding. As a small company, this time taken to respond to this work is devastating. It makes it really challenging to work with the State.

Please find attached ODOT's comments on the proposed rule changes.

Code	Page	Section	Issue
123:2-16-02	5	C	Not clear, think "must" needs included before "provide"
123:2-16-02	6	D	Not clear, think "must" needs included before "provide"
123:2-16-02	7	F	compared
123:2-16-02	7	G	"shall" should be removed
123:2-16-03	10	11	Not clear as written. Propose: "However, a business is not shall not be construed as not being controlled by a socially and economically disadvantaged owner(s)"
123:2-16-03	10	11	"with a with"
123:2-16-03	11	e	Not clear
123:2-16-04	12	2	public
123:2-16-05	12	B	"expiration" twice
123:2-16-05	13	J	Sole factor for what? Denying certification?
123:2-16-15	21	D	On site or onsite? Spelled two different ways.

We are pleased to submit our comments on EDGE program Rules 123:2-16-01 thru 15. as follows :

It is not clear what current rules are being revised- specifically what are the changes. We believe the specific shortcomings with regards to professional services- EDGE program are :

The intent of the program was always to have specific percentage of subcontracting for professional services- currently, many contacts are using printing and delivery services (which are reimbursable) as part of their EDGE goal- this was never an intent of the program - always the intent was that EDGE professional work with non edge MAJOR FIRMS to get better exposure and develop their skills/business/networking further- this circum venting idea is overlooked and sometimes encourage by the Administration. We strongly believe this should be corrected.

Additionally, many times we are listed as Edge for the project and our services are not utilized- no EDGE participation is done - there is no follow up or punishment to the major firm.

EDGE is very nice and practical program - what we need is meaningful participation and monitoring- we are not sure the rule changes are strengthening or weakening this fragile program.

Maybe have a mandatory educational/training program PRIOR to enrollment/certification process to detail the definitions and rules and expectations as they apply to a specific industry.

This program / webinar/tutorial maybe tailor-cut to a specific industry (NAICIS group-wise) so that a Construction person understand the Rules as they apply to there industry and an I.T. company understands the rules as it applies to their industry.

This way the Companies getting certified are more on same page as DAS about the expectations and Rules and it will also give the candidates a chance to review if they are a good fit for the program.

Definitions like "Net Worth" , "Good Faith Effort" maybe elaborated in these presentations for general better understanding....

Thank you for having me at the Stakeholder's meeting yesterday. A couple comments I have:

1. I wanted to echo the sentiment about the 10 year graduation. I am in favor of eliminating that requirement.
2. Along those same lines if the 10 year graduation remains, I understand it is proposed that after a one year period companies can re-apply. Will the net-worth standard be \$250k for companies re-applying or will it be the \$750 standard as it is for companies who renew?

In reference to Section 123:2-16-06, Decertification and Revocation , (A)-(2):

How will DAS/EOD determine a vendor is no longer socially disadvantaged?

"Socially Disadvantaged Person" means a person subjected to ethnic prejudices or cultural bias because of their identification with a particular group without regard to their individual qualities.